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Legal Advice

MR. EDWARD GRAYSON and Mr. PETER MASON in a letter to *The Times* earlier this week questioned the wisdom of The Law Society's new legal advice scheme and suggested that we return to the original scheme envisaged by the 1949 Act and " build up on the priceless goodwill and experience of the existing advice centres." Sir THOMAS LUND replied to this letter two days later and said that the Council's plan followed the fullest consultations with voluntary advice centres from which it emerged that only 65,000 applicants for advice under s. 7 could be expected each year and that 75 per cent. of those now seeking oral advice at the centres are dealt with in one 30-minute interview; moreover the proposed scheme amply provides for problems which cannot be so disposed of. It may well be that the large and old-established centres in London and other large cities will continue even after the new scheme comes into operation, if it is accepted by the profession. Certainly we do not wish to see the activities of the existing centres curbed in any way if they can provide facilities not provided by the new scheme. It is true that the service cannot function fully until the bridge exists between advice and negotiation which is provided in s. 5 of the 1949 Act but, as Sir Thomas Lund says in his letter, it is the Government's intention to bring this section into force next year. What Mr. Grayson and Mr. Mason overlook is the fact that most of the large centres of which they write are confined to thickly populated areas; it could not be otherwise. Over the rest of the country the arrangements are sporadic, and The Law Society are aiming to build and not to destroy. If the existing centres are found to be still necessary in whole or in part after the new arrangements come into force, they will surely continue, and indeed in our original 1954 article on the subject we expressly said that the scheme which we proposed was not necessarily appropriate to large centres of population.

An Eye for an Eye?

WE do not agree with LORD GODDARD that the function of the criminal law is deterrence and not reform. Obviously deterrence is a factor, and a most important one, in our penal code, but in our opinion it is part of the duty of the courts to take into account the prospects of reformation. In the narrow sense it is arguable that sentences of imprisonment protect the public in two ways; the threat deters and the imposition prevents, but the problem is deeper than this. The best protection for the public is to turn criminals into honest men—or honest enough not to fall foul of the law. The courts would be failing in their duty if they were not to take into account

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the possibility or otherwise of permanently protecting the public by treating an offender in such a way that he does not offend again. It is a question of balancing the probabilities. At one end of the scale it is usually wrong to allow liberty to a dangerous and hardened criminal merely because of the outside chance that in favourable conditions he might reform. At the other end it is usually wrong to sentence to imprisonment a first offender, even though guilty of a serious crime, merely *pour encourager les autres*. It may well be that the function of the courts should finish with conviction or acquittal and that sentencing should be entrusted to others, but so long as the system remains as it is the courts cannot evade their responsibilities. We can agree with Lord Goddard that the causes of crime are the same as in the days of the Old Testament. It does not follow that the remedies should be the same.

Estate Duty and Gifts *Inter Vivos* to Charities

AMONG the numerous new clauses proposed but not accepted during the Committee stage of the Finance Bill was one which had the backing of The Law Society and which, despite its ultimate withdrawal, succeeded in eliciting a Treasury undertaking which may prove of considerable practical importance. The clause sought to impose a duty on the Commissioners of Inland Revenue, on written request, to give a decision in writing on the question whether a proposed or actual gift *inter vivos* is to be regarded as made for public or charitable purposes within the proviso to s. 59 (1) of the Finance (1909–10) Act, 1910, thus relieving it of estate duty if the donor survives for one year. It was urged in support of the clause that in the parallel case of a trust or other body in receipt of income under a seven year covenant wishing to reclaim tax on that income, the income tax authorities will, on request, examine the trust deed or constitution of the body and say whether they are prepared to accept it as a charity. Thus the latter can go to its prospective benefactors and tell them that it has been accepted as a charity. The Estate Duty Office, it appears, have not been prepared to act similarly. Mr. J. E. S. SIMON, replying to the debate on the clause, said he thought a convincing case had been made out for action, although the clause as it stood could not be accepted, and he was prepared to give " a categorical undertaking that the practice of the Estate Duty Office will be the same as the practice of the inspector of taxes and that an opinion will be given to the best of the ability of the Estate Duty Office " in the sort of case envisaged by the clause.

Privilege in Proceedings under the Restrictive Trade Practices Act, 1956

ON the hearing of the summons for directions in one of the pending cases before the Restrictive Practices Court, *Re Chemists Federation Agreement* (*The Times*, 10th July, 1958), the Registrar of Restrictive Trading Agreements successfully raised a novel point which few had anticipated, but which will seriously handicap solicitors who act for respondents in proceedings before the court. The registrar claimed to be privileged on discovery of documents from disclosing any documents which had been prepared by him or by other persons for the purpose of the enquiries he had made during the previous year with a view to impugning the Chemists Federation Agreement. He rested his claim to privilege on the usual ground that a party need not disclose documents prepared in the course of, or with a view to, litigation. He did not claim that he was entitled to refuse disclosure because documents in his possession are technically in the Crown's possession ; such a claim would clearly be untenable in view of the court's power to order discovery against him by the Restrictive Practices Court Rules, 1957, rr. 36 and 41. The result of the registrar's successful claim to limited privilege will mean in practice that he need disclose no documents in his possession which are likely to be of any use to the respondents, and DEVLIN, J., clearly recognised this in giving his decision. The registrar's sole function is to register restrictive trading agreements and to seek to have them annulled by the court. Consequently, whether the documents he possesses are surveys prepared by his staff, questionnaires sent out by him to traders or consumers or associations representing them, or the replies which he has received to such questionnaires, they will all have been brought into being with a view to litigation, and will all be equally privileged. Devlin, J., emphasised that the registrar's duty is to bring all relevant information before the court, and not to suppress information which is favourable to the respondents, but it would surely create a better atmosphere and show that he has nothing to hide if he waived his claim to privilege. If documents are going to be produced at the hearing in any event, there is little point in refusing to disclose their existence and contents well beforehand so that respondents may be ready to meet them. Failure to disclose can only lead to a situation which discovery was invented to remedy, namely repeated applications by respondents for adjournments of the final hearing so that they may deal with evidence which has taken them by surprise. Devlin, J., remarked that counsel for the respondents asked the court to make new law when he asked them to reject the registrar's claim to privilege. This was undoubtedly so, but the Restrictive Practices Court is a new kind of tribunal with an unprecedented jurisdiction, and it should be strong enough to mould its own practice without adhering slavishly to the practice of the civil courts in litigation between private parties.

Natural and Probable Consequence

THE case of *The Lottinge* (*Owners*) v. *British Transport Commission* [1958] 1 Lloyd's Rep. 255 is one which should not be allowed to escape attention because it has not yet appeared in a less specialised series of reports. It seems that the defendants' piermaster fell into a lock which the *Lottinge* was about to enter. The *Lottinge* took emergency action " to avoid crushing, or otherwise injuring or killing " the piermaster and in so doing collided with the knuckle of the lock and rebounded and struck one of the walls. The plaintiffs, the owners of the ship, brought an action in respect of the damage to their vessel and the defendants counterclaimed in respect of the damage suffered by their lock. Judgment was delivered by WILLMER, J. He found that the plaintiffs' ship had approached the lock in a usual and proper manner and that the damage to the ship had been caused by the emergency " full speed astern " action which was taken when it became known that there was a man in the water. The court also decided that the emergency action was the natural and probable consequence of the situation which had arisen. His lordship considered the question of the piermaster's negligence in the light of the words of Lord Thankerton in *Hay* (*or Bourhill*) v. *Young* [1943] A.C. 92, and that of the defendants for failing to provide adequate

fencing in relation to a passage from the speech of Lord Normand in *Paris* v. *Stepney Borough Council* [1951] A.C. 367. Willmer, J., confessed that he would have had very great difficulty in deciding whether the piermaster or the defendants were at fault, but he concluded that one or the other must have been negligent and for that reason that the defendants were liable to the plaintiffs for the damage sustained by their vessel. The plaintiffs were entitled to expect that the passage of the *Lottinge* would not be encumbered or embarrassed by a man falling into the lock immediately ahead of it.

Public Relations

WITH the object of helping members of the public to know more about the law of the land, understand the part that lawyers play in the administration of that law and see, at first hand, the historic building in which the courts are held and the lawyers of to-morrow are trained, since 1956 the Law Society of Upper Canada and the *Toronto Daily Star* have been co-operating in the holding of Public Legal Forums. According to an article by Mr. ROBERT F. REID in the June issue of the *Canadian Bar Journal*, the audience, members of the public, are first taken on a tour of the court buildings and law school and are given a pamphlet to help them to remember what they have seen. Following this tour, a panel of four eminent lawyers answers questions of a topical and practical nature "in simple and straightforward language" concerning the subject nominated for consideration during that particular evening. The subjects have ranged from "The Law and Your Home" to "Wills and Estates" and "The Law and Your Traffic Accident," and many of the questions at each session are submitted by readers of the *Toronto Daily Star*, in which the discussions are fully reported on the days following each forum. In addition to this, the meetings are recorded and broadcast by many radio stations, and these reports and recordings are said to have become established as regular features. A recent innovation is the printing (by the *Toronto Daily Star*) and distribution (by the Law Society of Upper Canada) of the evening's questions and the answers given by members of the panel. These pamphlets are sent to every member of the audience who intimates that he would like to receive a copy. In this country we are frequently troubled by an apparent lack of "public relations" activity. Could it be that we would do well to attempt to imitate this bold, imaginative and obviously very successful experiment by our Canadian counterparts? Local law societies, particularly, might wish to consider such a venture, necessarily, in some respects, on a rather less ambitious scale.

The Rent Act in Practice

"RENT ACT PROBLEMS" has been a popular feature in our columns since the Rent Act, 1957, was passed, and readers have not only expressed appreciation of the service but have shown a desire to have the questions and answers in more permanent form. A selection from the problems we have received has accordingly been made and edited by Mr. N. D. BANKS, barrister-at-law, in the form of a 100-page book entitled "The Rent Act in Practice." In addition, the Landlord and Tenant (Temporary Provisions) Bill is surveyed in an appendix. Full tables of reference and an index are included and the book is being published next week by The Solicitors' Law Stationery Society, Ltd., price 15s. 6d., post paid. The "Rent Act Problems" feature will, of course, continue for the present, but we feel sure that many readers will welcome the opportunity of acquiring a conveniently arranged and fully indexed handbook of the problems to date.

PRIVATE INVESTMENT COMPANIES

THERE are many people living wholly or partly on unearned income derived from stocks and shares who could save an appreciable amount of tax by forming a private investment company to take over their shareholdings. The large increase in the number of such companies which has taken place since the Finance Act, 1957, shows that this fact is becoming more widely known and appreciated. The purpose of this article is, therefore, to examine the merits and drawbacks of such a course, bearing in mind that, subject to exceptions, investment companies under the control of not more than five "persons" (which term bears an extended meaning) are subject to automatic sur-tax directions under s. 262 of the Income Tax Act, 1952.

An investment company is defined by s. 257 of the Act as a company the income whereof consists mainly of investment income, which income is in turn defined as income which, if the company were an individual, would not be earned income. To ascertain whether a company falls within this definition, a view of the company's affairs over a reasonable period of time must be taken (*F.P.H. Finance Trust, Ltd.* v. *Inland Revenue Commissioners* [1944] A.C. 285).

Earned income relief

The principal advantage to be gained by the transfer of private shareholdings to an investment company can be stated quite briefly: It is that part—and often, in the case of a small company, the greater part—of the company's income can be paid to the owner of the company and his wife, or some other member of the family, in the form of directors' salaries, which are treated as earned income and so qualify for earned income relief. Since s. 12 (1) of the Finance Act, 1957, greatly extended the limit of such relief to £4,005 at the full rate of two-ninths, and by a further £5,940 to £9,945 at the half-rate of one-ninth, it will be seen that this relief assumes considerable importance even for the sur-tax payer.

Expenses

Subject to what is said later, a further saving of tax can be effected on account of expenses. The private investor is allowed no relief in respect of stationery, postages, telephone bills, accountants' fees, clerical assistance, heating and lighting or office expenses generally. The investment company, on the other hand, can claim these as "management expenses." Most of the company's income will suffer tax by deduction at the source, but untaxed interest will be assessed under Cases III, IV, V or VI of Sched. D, according to its nature. Relief in respect of expenses is granted by s. 425 of the Act of 1952, which provides that "where . . . any company whose business consists mainly in the making of investments and the principal part of whose income is derived therefrom . . . claims and proves to the satisfaction of the Special Commissioners that, for any year of assessment, it has been

charged to tax by deduction or otherwise . . . the company shall be entitled to repayment of so much of the tax paid by it as is equal to the amount of tax on any sums distributed as expenses of management (including commissions) for that year." Included in the expenses claim will be the directors' salaries which will have had tax deducted under the P.A.Y.E. regulations in the ordinary way.

All expenses must be reasonable and be "wholly and exclusively" laid out for the purpose of the company's business. What is reasonable by way of directors' remuneration is a question of fact in each case, the test being what the company would have to pay in the open market for a director of similar experience and ability. A company with a large portfolio of income-bearing investments will normally be justified in paying more for the services of its directors than a company with a small income, but in every case actual services must be rendered to the company. Stockbrokers' commissions are not included in the term "commissions" in s. 425 of the Act, nor is stamp duty allowed as a deductible expense (*Capital & National Trust, Ltd.* v. *Golder* (1949), 93 SOL. J. 466, 755; 31 Tax Cases 265).

Forming the company

Against the tax saving must be set the expense of forming the company and the stamp duty on the share transfers. It is not necessary, however, for the company's share capital to equal the value of the investments and cash transferred to it; it is better if the nominal capital is limited to £100 and the difference is represented by an unsecured loan account in favour of the vendor. This not only saves capital duty but has the advantage that it allows capital to be withdrawn from the company in case of need without recourse to a winding-up or an application to the court for a reduction of capital.

If the company switches its investments frequently, and particularly if this applies to a considerable part of its portfolio, the Inland Revenue may contend that it is an investment dealing company rather than an investment holding company, and so seek to tax any capital gains (less losses) which it makes. It is therefore important that, as far as possible, the company's investments should be reasonably permanent in character, comprising, say, medium or long-dated Government stocks and good class equities in the "growth" category. Moreover, the memorandum and articles of association should make it clear that the company is an investment holding company and that any capital gains must be placed to capital account and not distributed to shareholders. If it is desired to *deal* in stocks and shares a separate company should be formed with the appropriate objects clause, which will be treated quite differently from the tax angle, being assessed like any other trading concern under Case I of Sched. D. In that case stamp duty and brokerage will be allowed as an expense.

"Estate or trading income"

A company the income of which is derived wholly or mainly from the rents of property is also an investment company within the meaning of s. 257 of the Income Tax Act, 1952, but its income is chargeable to tax under Scheds. A or B, or in the case of "excess rents," under Case VI of Sched. D. In this case only the expenses of managing the company, and not the expenses of managing the property, can be included in the company's management expenses claim. The expenses of managing the property will be covered by the ordinary Sched. A repairs allowance or dealt with by means of a maintenance claim.

Both an investment company with investment income and a property investment company with "estate" income, as it is termed in the Act, may also have some trading income, which is defined as income which is not investment income; or an investment company may have both estate and trading income in addition to its investment income. The nature of its income determines the treatment to be accorded to a company for the purpose of sur-tax directions, but this article is only concerned, for the most part, with pure investment and estate incomes.

Sur-tax directions

In the case of an investment company (unlike a trading company) loan creditors are treated as members of the company in calculating the number of persons who control it, and if five or fewer persons would, as members or loan creditors, be entitled to 51 per cent. or more of the assets of the company in a winding-up, it ranks as a director-controlled company and is subject to sur-tax directions under s. 245 of the Act. Moreover, all investment companies are subject to the very stringent and comprehensive provisions directed against sur-tax avoidance which are contained in ss. 258, 259 and 260 and which, *inter alia*, deem a loan creditor to have an interest in the income of the company.

But whilst a company with pure investment income is subject to automatic sur-tax directions under s. 262, so that the whole of its income, less such management expenses as the Special Commissioners consider reasonable, is deemed for the purposes of assessment to sur-tax to be the income of its members, in the case of a company with estate income (as in the case of a trading company) only a reasonable proportion of its income is required to be distributed to members, the tests of adequacy being those prescribed by s. 246.

If a company has both investment income and estate income the two sources of income are treated separately. Automatic sur-tax directions are applied to the pure investment income, whereas a reasonable distribution of estate income will ward off sur-tax directions so far as that part is concerned. In deciding whether or not a reasonable proportion of estate income has been distributed, any dividends which have been paid are taken to have been met out of the pure investment income first and then out of the estate income, while outgoings are divided between the two sources of income in such manner as the Commissioners consider appropriate.

The company with estate income has thus one decided advantage over the company with pure investment income in that it is able to retain a proportion of its income within the company free of sur-tax, and so build up a revenue reserve fund. It is for this reason, among others, that an investment company usually contrives to have some estate (or trading) income; the simplest example being where an investment company with stock exchange investments owns a few shops which are let on full repairing leases to good tenants. But without estate income an investment company, if it is fortunate, will be able to accumulate some capital profit and place it to reserve. Or the members of the company may be in the lower sur-tax group or not liable to sur-tax, so that there is little or no sur-tax to be paid by the company, and it, too, is able to place some income to reserve.

Each case rests on its own particular facts and the liability or otherwise of the individuals concerned to sur-tax; but unless the holding of investments is too small, the formation of a private investment company deserves careful consideration and, in some cases, may well pay a better dividend than the switching of investments.

K. B. E.

Common Law Commentary

THE UNIDENTIFIABLE OMNIBUS

LORD DENNING is well-known for his individuality in his approach to the law and it naturally follows that the doctrine of precedent is not something towards which he, in common with some other judges, is likely to be over-solicitous. There are, of course, two ways in which that doctrine may be tackled: either by a frontal attack declaring it inapplicable to the court's decisions, or by a circumvention in which one decides that unless a former decision is fairly and squarely comparable to the decision one is making one distinguishes the two cases by pointing to the differences. It is generally accepted that in the Supreme Court and in the House of Lords only the latter attitude is now possible.

Nevertheless, his lordship suggested that there is a middle way by which the doctrine may be modified. In *London Transport Executive* v. *Betts* (*Valuation Officer*) (*The Times*, 26th June, 1958), he said that "when a particular precedent, even of their Lordships' House, comes into conflict with a fundamental principle—also of their Lordships' House—then the fundamental principle must prevail." One hesitates to comment on this before the full speech is available but clearly it will be important in arguing on these lines to know what are the fundamental principles which are not to be subject to erosion by the doctrine of precedent: in the particular case it seems to have been the fundamental principle of construction that the meaning of a word must be restrictive rather than extensive. On the other hand, in *Perrin* v. *Morgan* [1943] A.C. 399, the House of Lords held that the word "money" in a will should be interpreted broadly. On principle there seems to be a great deal in favour of Lord Denning s dissenting view, but clearly unless one knows what is the applicable fundamental principle one cannot be sure whether a precedent will hold. Nor is it likely that any separate guidance on this matter will be found: it will be for each party to search for any principle which appears fundamental and in conflict with an unwanted precedent to argue his case.

The doctrine of precedent

Before looking at the case in question, it may be worth while giving some consideration to the doctrine of precedent. There are some three causes of the growth of this doctrine. First, in a legal system which lacks a code of law the doctrine is necessary in order that something to take the place of a specifically produced code may be built up; secondly, justice requires some degree of consistency and that point helps the growth of the doctrine; thirdly, where there exists a hierarchy of courts, lower courts naturally follow earlier decisions of the higher courts because to do otherwise merely invites an appeal and would be futile.

The third cause does not apply to the House of Lords, and we may therefore assume, if our analysis is complete, that it is the first and second causes which give rise to and support the adherence to the doctrine. But these causes, unlike the third cause, are extra-legal causes: they are matters of the policy of the law. It is not law that makes the House of Lords be bound by its own decisions, for in matters of common law the House, for all practical purposes, makes the law. The House is bound because it has adopted the attitude that it shall be bound by its own decisions, having declared so in *London Street Tramways Co. Ltd.* v. *L.C.C.* [1898] A.C. 375. Not all courts or judicial tribunals are bound by their own decisions. The present Lord Chief Justice said in *Huddersfield Police* v. *Watson* [1947] K.B. 842 that a judge of first instance is not absolutely bound by the decision of another judge of first instance even though as a matter of judicial comity he would normally follow him (though of course the decision is subject to appeal). The Commissioner under the National Insurance Acts has said that he is not bound by his own decisions. There is no legal bar to the House of Lords saying that in future they will not be bound by their own decisions or saying that they will not be bound wherever it appears that a fundamental principle might be endangered by a too close adherence to precedent. That is not to say that the non-legal pressures in favour of remaining bound are not strong enough to prevent a change of policy.

A rating case

The case from which this matter arises concerned the question what is an "industrial hereditament" within s. 3 (1) of the Rating and Valuation (Apportionment) Act, 1928. The premises in question—a depot used for dismantling and reconditioning omnibuses—were admittedly a factory but the question was were they an "industrial hereditament"? There is a provision in the Act that a place used for the maintenance of the occupier's road vehicles shall not be regarded as part of the factory, and it was held that as the depot was so used it was not an industrial hereditament.

This turned on the meaning of "maintenance." There was an earlier House of Lords decision (*Potteries Electric Traction Co. Ltd.* v. *Bailey* [1931] A.C. 151) to the effect that "maintenance" includes repair. Lord Morton of Henryton considered that that decision applied so long as the work did not amount to reconstruction or manufacture of new parts except to an extent within the *de minimis* rule. His lordship did not think that "maintenance" and "overhaul" were mutually exclusive and he did not find any error of law in the tribunal's decision.

Lord Reid, concurring, said that it had long been established *practice* (our italics) that any decision of the House in a previous case on a question of law, such as the interpretation of a statute, should be regarded as binding, and should be followed whether or not the question was adequately argued or considered and however much their lordships might disagree with the decision. He would not himself be against a modification of this strict practice but so long as it existed he did not think he was entitled to depart from it. This last sentence lends itself to criticism, since it is clear that so long as the law lords feel that they are not entitled to depart from the practice so long will it exist.

Lord Denning did apparently feel himself entitled to depart some way from the practice. He pointed out that this large depot was fully equipped with overhead cranes and machinery of all kinds. Every bus that came there was taken to pieces, every part was examined, repaired, reconditioned or renewed and the parts from many different buses were re-assembled to form other buses. "No bus that comes out of the depot can be identified with one that went in," said his lordship (this, incidentally, seems to raise problems on road fund taxation of the vehicles). His lordship viewed with suspicion an interpretation which led to the result that premises that were so obviously a factory should not be classed as an

industrial hereditament. "Maintenance," thought his lordship, meant ordinary washing, cleaning, oiling, minor adjustments and running repairs. So far as the *Potteries* case was concerned he thought that that was a decision "on its particular facts" relative to a paint shop. If their lordships were to elevate that decision into a binding precedent on the meaning of maintenance, he said, they would carry the doctrine of precedent further than it had ever been carried before. The majority view was, therefore, that the premises were used for "maintenance" and so were not an industrial hereditament: the appeal failed.

Lord Denning's contentions

It will be seen that Lord Denning was contending for two things: first, that the doctrine of precedent should be limited by certain fundamental principles (of construction or perhaps of other matters), and secondly, that the interpretation adopted by the other law lords in this particular case went beyond even the normal realm of the doctrine of precedent. There being no further court of appeal the matter must be left there, but these remarks of Lord Denning may have some influence on later cases in the House.

L. W. M.

A Conveyancer's Diary

AN ADVANCEMENT POINT

THE view which I have taken of what constitutes a proper exercise of the so-called power of advancement (viz., a power to apply capital money subject to a trust for the benefit of a beneficiary) has often been stated in this Diary. The permissible modes of exercise have always seemed to me to include an out-and-out payment or transfer of money or investments to a beneficiary old enough to appreciate the value of the benefit and to know how to put it to good use, and payment or transfer of money or investments to the trustees of a simple settlement, whether already existing or created *ad hoc*, upon trust for a beneficiary who has not yet reached the age at which he can appreciate the value of the benefit, etc. The first of these modes, after a period of considerable doubt and debate in Lincoln's Inn, was recently approved by Danckwerts, J., in *Re Moxon's Will Trusts* [1958] 1 W.L.R. 165, and p. 127, *ante*, in which it was held that the word "benefit" in such a power (in that case, it was the statutory power conferred by s. 32 of the Trustee Act, 1925) was "the widest possible word one could have and . . . must include a payment direct to the beneficiary" (subject of course to the trustees making up their minds whether the payment in the particular manner contemplated was for the benefit of the beneficiary). I wrote of that decision soon after it was reported, at p. 168, *ante*. The second of these modes had, as it seemed to me, been approved earlier by Harman, J., in *Re Ropner's Settlement Trusts* [1956] 1 W.L.R. 902; "In my judgment," said the learned judge in that case, "having regard particularly to the decision of the Court of Appeal in *Re Vestey's Settlement* [1951] Ch. 209, where it was held to be an application of money merely to set it aside to accumulate for a child's eventual benefit, it must be an application of money to transfer it to trustees of a settlement to be made for the child's benefit, and I do not think that there is, on consideration, any difference in the position of an infant from that of an adult."

Sub-trusts

Nevertheless, in *Re Wills' Will Trusts* [1958] 3 W.L.R. 101, and p. 490, *ante*, a doubt was raised whether the power included a power to create sub-trusts, the doubt being founded on the suspicion that the creation of sub-trusts involved a breach of the principle *delegatus non potest delegare*. Under the will of his father, *M* was entitled to a share of residue contingently on his attaining the age of twenty-five. By cl. 18 of the will the testator authorised his trustees (in effect) during the subsistence of any prior interests with the consent of the person entitled to such interest "to raise" any part or parts of the share of any person under the trusts of the will "and to pay or apply the same for his or her advancement or benefit or for the benefit of any child, children or wife of such person" as the trustees might think fit. In 1940, before he had attained the age of twenty-five and while he was on active military service, twin sons were born to *M*, and the trustees of the testator's will in purported exercise of the power contained in cl. 18 executed a deed by which they declared that certain investments appropriated by them to *M's* share of residue should be held on certain trusts for the benefit of the twins on attaining the age of twenty-one years, and, if neither of them attained that age, upon the trusts applicable thereto if the deed had never been executed. *M* attained the age of twenty-five shortly after the execution of this deed, but subsequently died on war service.

Meaning of "raising"

On the summons taken out to test the validity of the exercise of the power in this manner by the trustees several points were raised on behalf of the persons who would have benefited if such exercise had been declared invalid. The first was a perpetuity point. It arose on the particular language of the testator's will and is of no general interest: the decision was that the exercise of the power was not invalid on this ground. The next point was that there had been no "raising" within cl. 18 of the will: "The trustees raised nothing, paid nothing, applied nothing. All the trustees did was to declare new trusts concerning certain scheduled investments: they advanced nothing." This point, it should be noticed, arose largely on the wording of the particular clause of the will: it would not arise in the same way on the statutory power, which is to the effect that trustees may simply pay or apply any capital money subject to a trust for the advancement or benefit of a beneficiary. But it merges into the next and last point, which was fundamental: was it permissible under this power to create sub-trusts?

Advancement by way of settlement

It was submitted that this point had been left open in *Re Vestey's Settlement* and not argued in *Re Ropner's Settlement Trusts*. But it had been touched on in other cases. Thus in *Roper-Curzon* v. *Roper-Curzon* (1871), L.R. 11 Eq. 452, trustees under a power to apply capital for the advancement or preferment of a beneficiary were not permitted to make an out-and-out payment to the beneficiary except on the terms that the beneficiary settled the property upon trusts for the benefit of himself, his wife and the issue of the marriage. In

Re Halsted's Will Trusts [1937] 2 All E.R. 570 an express power in the terms of the statutory power was held to authorise the trustees to settle a sum on a beneficiary with the object of providing for his wife and children. I have already referred to *Re Ropner's Settlement Trusts*. Finally, in *Re Meux* [1958] Ch. 157, a similar point arose on s. 53 of the Trustee Act, 1925, which authorises the court, with a view to the application of property to which an infant is beneficially entitled " for the maintenance, education or benefit of the infant," to make an order appointing a person to convey such property. Wynn Parry, J., held that payment of the proceeds of sale of the property ordered to be conveyed under this section to the trustees of a settlement under which the infant was a life beneficiary was an " application " of property for the benefit of the infant. The word " application " in s. 53 should, it was there held, be given the same meaning as in s. 32.

These authorities, Upjohn, J., held, established the proposition that " trustees exercising a power of advancement may make settlements upon objects of the power if the particular circumstances of the case warrant that course as being for the benefit of the object of the power." The learned judge then went on to consider the circumstances of the particular case to see whether the power had been properly exercised, and came to the conclusion that it had been. One of the circumstances which influenced this decision was the simplicity of the settlement on the twins. It conferred no powers or discretions on any person. The general conclusions which may be drawn from this decision are therefore, I think, these. It does not in any way affect the decision in *Re Moxon's Will Trusts*. If, then, trustees can properly come to the conclusion that an out-and-out payment or transfer of property to an object of the power would be for the benefit of the object, that is the best course which they can adopt. The transaction is then, on the authority of that case, inexpugnable. But if for any reason (and the age of the beneficiary is a very cogent reason) the trustees cannot reach that conclusion, then the execution by them of a simple settlement whereby the benefit accorded to the beneficiaries is made contingent on the beneficiaries attaining a greater age is within *Re Wills' Will Trusts* and, on the authority of this decision, equally inexpugnable. The question whether more elaborate trusts are or are not justified by the earlier decisions on this point (*Roper-Curzon* v. *Roper-Curzon* and *Re Halsted's Will Trusts*) is a difficult one, and in the interests of the beneficiaries the temptation to experiment should be avoided.

" A B C "

Landlord and Tenant Notebook

COSTS OF LICENCE TO ASSIGN

THE Costs of Leases Bill, which proposes in effect to reverse the law upheld in *Grissell* v. *Robinson* (1836), 3 Bing. N.C. 10, by which, in the absence of agreement to the contrary, a lessee is liable for costs of the lease, was editorially welcomed in our " Current Topics " on 17th May last (*ante*, p. 351). Two criticisms were made of the present rule and its operation : the absence of rational basis, and the amounts which it makes recoverable.

It is probable that the rule itself came into being at a time when possession of a lease was of far greater importance to a lessee than was possession of a counterpart to the lessor; the latter, holding the title deeds, would be in a very strong position against the former if he had no documentary evidence of the grant of a term. And a glance at the *Law Society's Digest*, 1954, vol. I, Opinion 274, shows that in various parts of the country the operation of the rule has been modified by local custom.

Would the criticism which has been levelled at this rule apply to the custom by which a lessee desirous of assigning or underletting, but bound by a covenant against alienation, " licence, or consent, not to be unreasonably withheld " expressed or imported by the Landlord and Tenant Act, 1927, s. 19 (1) (*a*), is called upon to pay lessor's solicitor's costs on the grant of a licence or giving of consent ? I propose to discuss the questions whether, in the absence of agreement, he is so liable ; and, if so, for what amount.

Enforceability

In the case of the costs of a lease, it is settled law that the lessee is (in the absence of agreement to the contrary) liable to the lessor for the lessor's costs. Can the same be said of the costs of a licence ?

There appears to be no decision in point. But statutory recognition of the enforceability of a custom appears to be afforded by the Law of Property Act, 1925, s. 144, which, after forbidding the lessor to exact a fine or sum of money in the nature of a fine, declares : " . . . but this provision does not preclude *the right* to require the payment of a reasonable sum in respect of any legal or other expenses incurred in relation to such licence or consent," and by the above-mentioned Landlord and Tenant Act, 1927, s. 19 (1) (*a*), which makes a similar declaration but uses the expression " in connection with " in place of " in relation to."

The existence and language of these provisions would amply support the proposition that if on receiving an application the lessor said " Yes, if you will pay any costs I incur " he would have an enforceable claim ; but they do not, in my submission, go as far as to establish that in the absence of any such stipulation such a claim would be valid.

The Law Society's opinions

On this question of enforceability, the Council of The Law Society gave a considered opinion on 18th December, 1953, now published in the *Law Society's Digest*, 1954, vol. I (No. 304) : " In the opinion of the Council a lessee intending to assign, underlet or otherwise deal with his interest must (in the absence of agreement to the contrary) bear the costs and expenses necessary to put himself in a position to do so. Accordingly, he will be responsible for the costs and expenses of his own solicitors in connection with procuring a licence to assign, underlet, or as the case may be, from his immediate lessor, and also for the costs and expenses of his lessor's solicitors in that connection (including the costs and expenses of any similar licence which such immediate lessor may have to obtain from his superior lessor and so on upwards).

" Unless otherwise agreed the assignee, underlessee or other party with whom the lessee enters into a transaction will not become liable to bear the costs and expenses above mentioned."

The opinion is, it seems clear, more concerned with the position as between alienor and alienee than with that between

alienor and his landlord; but the use of the auxiliary verb "must" invites the query "morally or legally?" In an opinion dated 14th July, 1904, and published in the 1923 edition of Law, Practice and Usage in the Solicitor's Profession (No. 989), the Council said: "A lease contained a covenant against assignment without the lessors' consent, but provided that such consent should not be withheld unreasonably or capriciously. The lessee proposed to assign his lease and the lessors were satisfied to grant the necessary licence. The Council were asked to say whether they thought that the lessee ought to be called upon to pay the reversioners' solicitors' costs of granting the licence. The Council expressed the opinion that it is customary for lessees to pay a reasonable fee for the lessors' cost of a licence to assign or sub-demise, but that there appeared to be *no legal obligation* for them to do so *in the case* in question."

The effect

Neither the Law of Property Act, 1925, nor the Landlord and Tenant Act, 1927, was in force at the date of the earlier opinion; but s. 144 of the first-mentioned merely re-enacted s. 3 of the Conveyancing Act, 1892. And I suggest that the effect of the two opinions taken together is this: if, in order to be able to assign or sub-let, a lessee is legally obliged to obtain his lessor's licence or consent, and the circumstances are such that the lessor is justified in instructing a solicitor in the matter, the lessee is legally liable to reimburse the lessor the amount of costs reasonably incurred.

But I submit that neither the opinions nor the statutory enactments will warrant the proposition that such liability is a feature of every possible case. Take that of a lessee, original grantee (and thus remaining liable on the covenants), who wishes to assign to *X* and is able to accompany his request for consent by references from archbishops and judges testifying to *X*'s respectability and responsibility: the lessor cannot, I suggest, invoke the non-preclusion of a non-existent right, and if he instructs his solicitor to write and express his consent he cannot recover the costs from the lessee. It may be that the opinion of 14th July, 1904, dealt with such a case.

Amount

Remuneration is, of course, not governed by scale in these cases. The editorial which I mentioned in my opening paragraph characterised the scale of fees which solicitors are entitled to charge tenants on the grant of a lease as fantastic; but when it comes to the question of fees for preparing licences to assign, etc., there is more scope for argument. And it is rather surprising, or else it is due to the efficacy of the law relating to taxation of costs, that more has not been heard about lessees' objections to paying for elaborate documents which recite at great length the history of the lease as well as that of the application for consent. For, apart from the question whether the case is one in which the lessee is legally liable, we have the "a reasonable sum" in the statutory enactments mentioned, and the "in relation to" in one of them and the "in connection with" in the other and in the opinion of 18th December, 1953.

R. B.

HERE AND THERE

THE INADEQUACY OF LANGUAGE

ONE of the drawbacks of universalised literacy, even to the sub-basic extent achieved in some council schools, is that it fortifies the general fallacious assumption of the omni-competence of language. It is generally taken for granted that every human emotion, experience and intuition, every subtlety of physical or mental perception has its exact equivalent in the purely conventional system of cluckings and clickings, labial and guttural sounds, which we call speech, and in the equally conventional hieroglyphics into which those sounds can be roughly translated. Lawyers are particularly prone to believe that what is inexpressible must be non-existent. Anyone who has ever attempted even a simple translation from one language to another is instantly aware of the essential limitations of language. Take even such a simple word as "bread." To a man eating thin, bleached insubstantial slices of "cut loaf" in a Brixton café, bread means something very different from what a Frenchman in Nantes, cutting great chunks out of a solid round armful of a loaf, means by "*pain*." And if in so simple a matter language is so rough and ham-fisted in its equivalents, what of its adequacy to the subtler shades of meaning in the mind? Still, one mustn't give up the unequal struggle to use words accurately, so far as they will go, and not to lapse into a general habit of telling lies by reckless fluency, that reckless fluency which is the mark of so much writing in the daily papers. It was interesting, therefore, to see a decision of a criminal court in Athens recently turning on a point of mis-translation from English into Greek. In the mouths of the ancient Greeks language certainly became an instrument of remarkable range and accuracy, and evidently the modern Greeks have not completely forgotten that tradition. An article in English had stated that the Greek Government had "indicated serious concern" about affairs in Lebanon. In a Greek paper this had been so translated as to substitute "special interest" for "serious concern," there being, it is said, no modern Greek word which conveys the precise meaning of "concern." Now, in Britain people reading their papers in the usual trance would hardly notice the difference and a slip of that sort would, and constantly does, pass unnoticed, but not so in Greece, where apparently the freedom of the press does not include Impressionistic artistry. The publishers of the guilty paper were condemned to five months' imprisonment and a heavy fine, while the paper itself was deprived for two months of customs exemption on imported newsprint. At present an appeal is pending, but imagination stirs happily at the effect it would have in Fleet Street if proprietors of newspapers, editors and journalists were liable to be dragged up Ludgate Hill to the Old Bailey to answer charges of murdering, racking, torturing or assaulting ordinary reasonable English words. One would have to rebuild and re-open the Fleet Prison and staff it with philologists, grammarians and professors of literature to give the inmates classes in occupational therapy.

SYMBOLISM AND SECURITY

THE inadequacy of mere language to express the dark mysteries of the human soul very often appears in the non-linguistic methods of expression which people adopt in moments of complicated passion or fury. Quite recently, you remember, there was the case of the ship's master dismissed from his command, wrongfully, as he believed, for some

manœuvre in Benghazi harbour, who planned to express his indignation by hoisting the Red Ensign over the Egyptian flag on the flagpost of the Victoria Tower and, for this purpose, hid for forty hours in a broom cupboard in the Houses of Parliament. We all know by common experience that there are states of mind and emotion, convictions and belief that can find a better expression than words in the ringing of bells, the wearing of wigs or helmets, the colour of a shirt, the cut of a coat or the symbolic use of flowers, fruit, vegetables or eggs. When words fail, it is realistic to appeal to these and that is what the captain very sensibly did. But what will especially interest those whose business takes them to the Houses of Parliament will be the mechanics of his adventure, the place and duration of his concealment, since one assumes that this period of seclusion was not an essential part of the symbolism, a deliberate period of fasting, recollection, meditation and preparation, the equivalent of an ascetic's withdrawal to his cave or a knight's vigil in the crypt, though that would have been appropriate enough in a building every stone of which breathes the spirit of the Eglinton Tournament and the Gothic revival. Lawyers who occasionally penetrate the Palace of Westminster, when the House of Lords is hearing appeals or Private Bills are being argued before the Committees, must have been struck by the ease with which a human being can be lost and therefore hidden in the mazy passages, many of them, if you notice, with inviting trap-doors let into the floor. There are mysterious doors, baskets as big as Falstaff's clothes basket, all the apparatus of seclusion. If you only walk along confidently enough, preferably with a sheaf of papers in your hand, no one challenges you. So many people are doing so many different things that entrance is the easiest thing in the world. If you look like a workman, you are probably engaged on the endless repairs which are always in progress. If you look like a middle-aged mum, you are probably a cherished constituent going to see her member. If you are young and glamorous, you are probably a secretary. You could carry anything in provided it was in a brief case or a blue or red bag, for then you could pass for a barrister or a solicitor or a barrister's clerk. Don't look lost and no questions will be asked. Now, thanks to the captain, we know just what will happen if you are found early in the morning shaving in a cleaner's cupboard. With the courtesy worthy of a servant of so ancient an institution the cleaner will say: "I beg your pardon, sir, but please can I have my bucket?" You reply graciously: "Do help yourself." She then retires, saying genially: "Now you can have it on your own again." You see what one means about the inadequacy of language.

RICHARD ROE

TALKING "SHOP"

July, 1958.

TUESDAY, 8TH

Connoisseurs of the chestnut will remember that when the retired solicitor read the second lesson from St. Mark, the habit of a lifetime caused him to render the text to the congregation as though the blind man at Bethsaida had seen men as trustees walking. It would be pleasing to suppose that those trustees were not merely taking the air but exchanging helpful and constructive suggestions upon the problem of breaking up some obsolete trust and putting the money at the disposal of an elderly *cestui que trust*.

Too many of these ancient trusts have long since outlived their usefulness but they moulder on for want of knowledge on the part of the trustees and initiative on the part of the solicitors concerned with them. There must be many elderly people struggling to make both ends meet on an exiguous income of ever-diminishing value at the grocery and upon the supposition that the trust is sacrosanct. Whether it is so or not must depend in the main on the terms of the trust instrument and the circumstances of the case. But the ingenuity of the lawyers and the readiness of the trustees to accept modest risks or to act upon indemnity or insurance are often the deciding factors.

WEDNESDAY, 9TH

Examples of the type of trust that I have in mind are as follows (arranged in an order corresponding more or less with the increasing difficulty of putting an end to them):—

(1) *Bare trusts*

The anxiety which some trustees show to rid themselves of their trusts at the first convenient opportunity is not universal. It is quite a common thing for trustees to retain trust property in their control long after they should have made it over to a beneficiary of full age and absolutely entitled in possession. Sometimes this is due to ignorance of legal terminology, e.g., the popular fallacy that "in trust" implies a continuing trust. Sometimes an event happens, such as attainment of a vesting age or the merging of a life interest with a remainder, which is not observed by—or the significance of which is lost on—the trustees. But in my experience the reason for such retention most commonly is an assumption on the part of the trustee (it is usually in this case a sole trustee) that he knows what is best in the interests of supposedly spendthrift or feckless beneficiaries.

(2) "*Lassence* v. *Tierney*" *trusts*

A good example of this class has recently come my way. *F* by his will left his residuary estate to his children in equal shares but directed that his daughters' shares should be retained by his trustees and held upon certain trusts declared by the will. By the time the draftsman of this will had reached the fourth page he had evidently tired himself out, for he made no provision for the event that a daughter might not marry, or that having married she might have no child. All the shares have long since been distributed except for two—the share of *A*, a spinster of eighty-seven and the share of *B*, a childless widow of seventy-nine. Nothing prevents the trustees from making over the capital of these shares to *A* and *B* respectively, except the remote possibility that one or other might marry (the will confers a life interest on any surviving husband).

This is also a good example of the type of case which demands attention to psychology. Both ladies were educated in the Victorian tradition that capital must never be spent. Thus it must not be assumed that they would wish to spend it, even if it were put at their free disposal. Moreover after a lifetime shackled to their "trust" will they wish to have the fetters broken? They may value security more than freedom and be alarmed at the prospect of handling their

own capital. Finally the approach should be cautious, for you may well be told that you have no business to assume that they are not living very comfortably within their means.

(3) *Others*

There are a large variety—ranging from the simple case where a life tenant has only to make a general appointment by deed, to the impossible, where there is an ultimate trust for infants or charities.

In the intermediate class are life tenants with a general power to appoint by will only, followed by a trust in default of appointment for their next of kin. I have usually found these cases difficult, though not always insuperable.

A common difficulty is this. If the general power is released, the property goes to the next of kin, a class which cannot be ascertained with certainty; thus the trustees cannot be sure of obtaining the consents they require.

One device which is commonly used is a covenant not to revoke or alter the will, but I gave an example the other day of a lady who did so in breach of covenant and left a worthless claim for damages against an insolvent estate.

Another device is to appoint the fund to the trustees in trust to indemnify themselves against any breach of trust in handing it over to the life tenant. This rather resembles the well-known process of shutting the stable door when the horse has escaped and I think it may be a safe rule not to employ it except upon counsel's advice.

Week-end Reflections

Official correspondence, both inward and outward, indicates that our typists are winning the battle of the upper case, or capital letter. I don't know what they are taught on this subject at their secretarial colleges. I suspect they are taught very little, for the principle on which most of them seem to work is: when in doubt press the cap. tab. The result is chaos (now pronounced by our teenagers at the "techs" like "chops" less the p)—which I suppose most of us put up with because life is short and time is money.

Once in a moment of indiscretion I let it be known that clients could safely be spelt with a small "c" and that if counsel were to be dignified by a large one I could see no logical reason why solicitors should not follow suit. This being interpreted to mean that "Mr. Escrow does not like capital letters" produced some singular compositions (with, e.g., Consols spelt with a small "c" and boards of management and company officials slaughtered wholesale) and the ensuing strategical withdrawal from an untenable position seems to have left matters much in the same posture as before.

In truth, of course, the decision whether or not to use a capital letter is not always easy to make, even if you happen to be acquainted with the elusive conventions on the subject. Usually nothing turns on it, but occasionally it can be important. One sometimes sees letters containing demonstrative references (e.g., to our clients, the Trustees) mixed up with the undemonstrative (e.g., a general reference to trustees for the purposes of the Settled Land Act, 1925): by convention the former take the upper case and the latter the lower. The same convention should be observed in documents, though if carefully phrased the language should suffice to show whether a specific or general reference is intended.

The common-form lease provides splendid opportunities for the abuse of the capital letter. Thus "the Landlord's fixtures" with a capital L *may* mean "fixtures belonging to the Landlord" and these in turn *may* include fixtures in the nature of tenant's fixtures; but use a small l and this *may* tip the balance so that your provision relates to "landlord's fixtures" in the generic sense of fixtures adherent to the realty. Similar questions arise when the draftsman employs such a phrase as "whether by the landlord or the tenant" but fails to indicate in any other way whether the reference is specific or general.

Will some kind and knowledgeable reader come forward with a few simple rules for mastering the use of the capital letter? Perhaps a précis, in simple terms, of the compositor's handbook, embellished with forensic illustrations? Until he does so I fear we shall continue to be victims of capitalism, that is to say, the dominance of private capitalists.

"Escrow"

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

Legal Advice Scheme

Sir,—I hope that the profession will firmly, quickly and decisively reject the proposed Legal Aid Scheme. The present legal aid is worked by a comparatively small number of solicitors and firms and at their expense. The burden of the new scheme will also fall on them. Why should they alone of all the beneficiaries of the Welfare State have to contribute valuable time for inadequate remuneration?

M. H. Pinhorn.

London, S.W.6.

Change of Christian Name

Sir,—Your note on p. 478 of [the 5th July] issue reminds me of a very unsatisfactory aspect of the decision in *Re Parrott*. This decision deals only with the change of *Christian* name and mentions the possibility of change at confirmation. What about the many who are not Christians and so have no Christian names? Have they no right to change their names (except surnames) otherwise than by Act of Parliament? What, also, about those who are Christians and so have Christian names, but are of a religious denomination which has no bishops and, possibly, no confirmation? Are they in a similar position? It has always seemed to me that the *Parrott* decision (and, if I may say so, your note) rests on the assumption that all persons who are subject to our common law are Christians and belong to the Church of England or, at least, some religious denomination possessing bishops and a confirmation service. What advice does a solicitor give to, say, a Quaker, a Jew or an atheist who consults him as to changing his "given name" as the Americans call it?

S. Clayton Breakell.

Manchester, 2.

[There is surprisingly little authority on this matter. The position at common law seems to be that a person may change his name, whether a forename or surname, at will, with the sole exception—with which *Re Parrott* was concerned—that he cannot ordinarily divest himself of a baptismal name. Unbaptised persons appear to be free in English law to effect a true *change* of forename, whereas those who possess a baptismal name can only *add* additional forenames unless they are confirmed and the change is made at the confirmation service. For most practical purposes the distinction is somewhat unreal, since an added forename can be used in daily life to the exclusion of the baptismal name, although the latter would still have to appear on passports, etc.—Ed.]

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

House of Lords

RATING : "SOCIAL WELFARE" : FRIENDLY SOCIETY : CONVALESCENT HOME

Trustees of the National Deposit Friendly Society *v.* Skegness Urban District Council

Lord Keith of Avonholm, Lord MacDermott, Lord Somervell of Harrow, Lord Denning and Lord Birkett

25th June, 1958

Appeal from the Court of Appeal ([1957] 2 Q.B. 573; 101 Sol. J. 664).

A society registered under the Friendly Societies Acts claimed to be entitled to the benefit of the rating relief provided by s. 8 (2) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, in respect of a convalescent home and premises occupied by the society, on the ground that it was a hereditament "occupied for the purposes of an organisation . . . which is not established or conducted for profit and whose main objects are charitable or otherwise concerned with the advancement of . . . social welfare" within the meaning of s. 8 (1) (*a*). According to its rules the main objects of the society were "to provide by voluntary contributions and deposits of the members" *inter alia* relief during sickness, medical benefit, convalescent home benefit, and insuring money to be paid on the death of a member for members in the deposit and alternative benefit sections and, for members in the assurance section, the whole of the life assurance payable at the death of a member, life endowment assurance, endowment assurance (payable to a member at the end of a term of years) and annuities in old age. The income of the society was devoted to the payment of interest on the deposit accounts of members, the maintenance of sufficient funds to provide on an actuarial basis for the benefits to which the members were entitled in accordance with the rules, and the payment of the expenses of management. No member received any dividend or share of income other than interest at 2½ per cent. on money standing to the credit of his deposit account and such sickness or other benefits as were provided by the rules. Under the rules governing the admission of members the committee of management, who could require a medical examination, might at their discretion admit persons of either sex as benefit members who satisfied the committee regarding "age, health, character and occupation" and a candidate was required to be "in good health, of sound constitution, with no hereditary family complaint and shall not be following an occupation considered by the committee . . . to be risky or injurious to health." There were also a number of rules and tables of premiums relating to assurance. The convalescent home in question was open without charge to members of the society whose subscriptions were not more than four months in arrear. It was agreed that the society was not a charitable organisation. The Divisional Court, affirming the decision of the Lincoln (Parts of Lindsey) Quarter Sessions, held that it was not entitled to the relief provided by s. 8 (2). The Court of Appeal having upheld the decision, the society appealed to the House of Lords, contending that it was not conducted or established for profit and that it was an organisation whose main objects were concerned with the advancement of social welfare.

Lord Keith of Avonholm said that the appellant society might properly be described as a mutual insurance organisation set up to provide benefits for its members in the various mischances of illness, disability and old age that might befall them during membership and to afford them an opportunity of taking out whole life assurances, endowment assurances and old age annuities for themselves, and certain other defined types of insurance. It held very large investments which earned large sums of interest and rents. These were, no doubt, profits and gains for the purposes of the Income Tax Acts, but these investments did not make the society an organisation "established or conducted for profit" within s. 8 (1) of the Act of 1955. If it were otherwise many charitable organisations holding investments would be cut out of the benefit of s. 8. The appellant society further argued that the protection afforded by it was a species of social welfare and that it was concerned with this type of social welfare. It was submitted that the advancement of social welfare included making people socially well, at least where it was sought to attain that end among people in the wage-earning class, as here. On the other side, it was said that advancement of social welfare involved the conception of an organisation for the spread of social welfare, of devotion to good works, of some propagation or encouragement of social welfare from the outside on altruistic grounds or motivated by Good Samaritan principles. It had been the practice of rating authorities before the Act of 1955 to make sympathetic assessments on charitable organisations as a matter of grace. The Local Government Act, 1948, transferred the duty of making valuations to the valuation officers of the Inland Revenue as from 1st April, 1956, and so deprived the local rating authorities of the power to make sympathetic assessments in the case of charitable organisations. These had been made not only on charitable organisations in the strictly legal sense but also on charitable organisations in the popular sense. The society contended that s. 8 should be given a liberal construction in favour of non-profit-making organisations. The local authority relied on the Valuation for Rating Act, 1953, as supporting the view that it should be given a restricted construction, as otherwise shops and other premises that did not come under the relief of s. 8 would be the more heavily burdened. It would be unsafe to venture on any precise definition of s. 8 for the purposes of the present case. Each case must be considered on its own merits. The words "or are otherwise concerned with the advancement of religion, education or social welfare" indicated that the section was concerned with objects which were also the concern of charitable organisations but which for some reason might fail to come within the definition of "charitable purposes" in the strictly legal sense. The section showed that the objects of an organisation need not be wholly charitable. It was sufficient if its main objects were charitable, but that left it open, if its main objects were not charitable in the legal sense, to say that they were concerned with religion, education or social welfare. But it was impossible to hold that an organisation like that of the society, formed for mutual assistance of members admitted on a selective basis, albeit described as members of the lower wage-earning class, could be described as an organisation whose main objects were concerned with the advancement of social welfare. It was impossible to distinguish it in any essential respect from any mutual insurance society which provided similar, if more enlarged, benefits for a wider and more diverse cross-section of society. The appeal should be dismissed.

The other noble and learned lords agreed in dismissing the appeal. Appeal dismissed.

Appearances: *Pennycuick*, Q.C., *Widgery*, Q.C., and *D. Barker* (*Woolley, Tyler & Bury*); *Sir Arthur Comyns Carr*, Q.C., and *Charles Scholefield* (*Wrentmore & Son*).

[Reported by F. Cowper, Esq., Barrister-at-Law] **[3 W.L.R. 172**

Court of Appeal

PRESUMPTION OF DEATH AND DISSOLUTION OF MARRIAGE: WHETHER DISTINCTION BETWEEN "DISSOLUTION" AND "DIVORCE"

Deacock *v.* Deacock

Hodson and Morris, L.JJ., Vaisey, J.

18th June, 1958

Appeal from Barnard, J.

The husband, a British subject, who had married the wife, a Greek woman, in Greece in 1918, deserted her in 1930. He never returned to his wife and never informed her of his whereabouts. In 1943 he obtained in the English courts an order under s. 8 of the Matrimonial Causes Act, 1937 (now s. 16 of the Act of 1950) presuming the death of the wife and granting him a final decree dissolving the marriage. In 1951 the wife learned of the decree dissolving the marriage, but for financial reasons she was then unable to take steps to upset the decree, but in 1954 she

obtained legal aid and applied under s. 19 of the Act of 1950 for maintenance. Barnard, J., dismissed the application. The wife appealed.

HODSON, L.J., said that it was contended by counsel for the husband that there was a distinction between the words "dissolution of marriage" and "divorce," and that, as s. 19 contained the word "divorce" and s. 16 did not, there was no statutory power to apply for maintenance in the case of presumption of death. It did not follow that because the courts presumed a person to be dead that was a true fact. In his lordship's view the word "dissolution" related to the marriage bond itself, whereas the word "divorce" related to the parties to the marriage bond; and it was apt to refer to "divorce" when speaking of parties and "dissolution" when speaking of the bond. There was no force in the argument that there was no remedy by way of application for maintenance after a decree of this kind had been pronounced, and his lordship did not agree with that part of the reasoning of Pearce, J., in *Wall* v. *Wall* [1950] P. 112, at p. 121, which dealt with this point. The appeal should be allowed.

MORRIS, L.J., and VAISEY, J., agreed. Appeal allowed.

APPEARANCES: *J. B. Latey*, Q.C., *E. R. Moulton Barrett* and *J. B. Gardner* (*J. A. H. Powell*); *S. K. de Ferrars* and *J. M. Rankin* (*Stoneham & Sons*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [3 W.L.R. 191

HUSBAND AND WIFE: HUSBAND ACQUITTED OF ADULTERY ON WIFE'S DIVORCE PETITION: CONFESSION OF PERJURED EVIDENCE BY HUSBAND'S WITNESSES AFTER DISMISSAL OF PETITION

Piotrowska *v.* Piotrowski

Hodson and Morris, L.JJ., and Vaisey, J. 23rd June, 1958

Application for a new trial.

On the hearing of a wife's petition for divorce on the ground of her husband's adultery with one J. S., the trial judge accepted the evidence of the husband, of J. S. and of her mother, acquitted the husband of the adultery alleged, and dismissed the wife's petition. Later, the husband, J. S. and her mother confessed that they had given false evidence in the suit relevant to the issue of adultery, pleaded guilty to charges of perjury, and were convicted and sentenced on those charges. The wife obtained leave to appeal out of time, and on the hearing of the appeal applied for a new trial.

HODSON, L.J., said that there should be a new hearing under the powers conferred on the court by Ord. 58, r. 10 (which provides: "(1) On the hearing of any appeal the Court of Appeal may, if it thinks fit, make any such order as could be made in pursuance of an application for a new trial or to set aside a verdict, finding or judgment of the court below"). That had been done in *Worsley* v. *Worsley and Worsley* (1904), 20 T.L.R. 171, where a similar situation occurred in a case where the trial had been before a judge and jury; and his lordship had in his own recollection a case in which a similar course had been taken where the hearing had been before a judge alone. On the way in which the case had been presented to Lord Merriman, P., on the hearing of the petition the conclusion which he had reached was almost inevitable; but on the information now before the court there must be a new hearing.

MORRIS, L.J., and VAISEY, J., agreed.

APPEARANCES: *R. V. Cusack* (who did not represent the wife before the President) (*Peake & Co.*, for *Lapage, Norris, Sons and Saleby*, Stroud).

[Reported by Miss M. M. HILL, Barrister-at-Law] [1 W.L.R. 797

ESTATE DUTY: BEQUEST TO TRUSTEE FOR LIFE OF INCOME "... SO LONG AS HE SHALL ACT AS ... TRUSTEE ... BY WAY OF REMUNERATION": WHETHER EXEMPTED

Public Trustee *v.* Inland Revenue Commissioners

Lord Evershed, M.R., Romer and Ormerod, L.JJ.
26th June, 1958

Appeal from Danckwerts, J. ([1958] 2 W.L.R. 429; *ante*, p. 177).

A testator gave to one of the trustees of his will the income from certain shares of his residuary estate "during his life so long as he shall act as executor and trustee of this my will by way of remuneration for so doing . . ." On the death of the trustee, the Inland Revenue Commissioners claimed estate duty under s. 1 of the Finance Act, 1894, as property passing on the death, on the share of capital corresponding to the share of income to which the trustee had been entitled immediately before his death. The claim was resisted by the Public Trustee on the ground that the interest was enjoyed by the deceased "only . . . as holder of an office," and that it therefore came within the exemption from duty in s. 2 (1) (*b*) of the Act. Danckwerts, J., held that the claim to duty succeeded on the ground that the exemption in s. 2 (1) (*b*) of the Act of 1894 only applied in respect of property within the extended meaning given to property passing on the death in s. 2, and had no application to duty payable under s. 1. The Public Trustee appealed.

LORD EVERSHED, M.R., said that it had been the contention of the Public Trustee, following an earlier decision in *A.-G.* v. *Eyres* [1909] 1 K.B. 723, that the interest which the deceased had as an income beneficiary was only an interest as the holder of an office, namely, the office of executor and trustee; but since the exemption appeared in the second half of para. (*b*) of s. 2 (1), and since it had been held and was conceded that there was here a passing of a proportionate share of the corpus under s. 1, it would be apparent that the contest had raised the question of the application (and, indeed, under the Public Trustee's argument, the validity to-day) of the celebrated dichotomy between s. 1 and s. 2 (1) of the Finance Act, 1894, which was enshrined in the well-known speech of Lord Macnaghten in *Cowley* (*Earl*) v. *Inland Revenue Commissioners* [1899] A.C. 198. In his (his lordship's) judgment, however, despite the observations of Lord Radcliffe in *Sanderson* v. *Inland Revenue Commissioners* [1956] A.C. 491, at p. 500, that this *dictum* should be resigned "to the list of the many minor mysteries of the law," the Court of Appeal could not do other than treat Lord Macnaghten's *dictum* as still applicable. It would suffice by way of supporting that conclusion to refer to the language of Jenkins, L.J., in the *Duke of Norfolk's* case [1950] Ch. 467, at p. 484, where he said: "It is clearly not open to this court to depart from the construction placed on ss. 1 and 2 over fifty years ago by the House of Lords in *Cowley* (*Earl*) v. *Inland Revenue Commissioners*." Accordingly, in the present case the court could do no other than dismiss the appeal.

ROMER, L.J., delivered a concurring judgment.

ORMEROD, L.J., agreed. Appeal dismissed. Leave to appeal to the House of Lords.

APPEARANCES: *John Pennycuick*, Q.C., and *J. A. Wolfe* (*Russell & Arnholz*); *Sir Lynn Ungoed-Thomas*, Q.C., and *E. Blanshard Stamp* (*Solicitor of Inland Revenue*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] [3 W.L.R. 163

SHIPPING: CHARTERPARTY: "ARRIVED" SHIP: OBLIGATION TO HAVE CARGO AVAILABLE

Agrimpex Hungarian Trading Company for Agricultural Products *v.* Sociedad Financiera de Bienes Raices S.A. The *Aello*

Lord Goddard, C.J., Parker, L.J., and Lloyd-Jacob, J.
27th June, 1958

Appeal from Ashworth, J. ([1957] 1 W.L.R. 1228; 101 SOL. J. 975).

By a port charterparty dated 27th August, 1954, the steamship *Aello* was chartered to proceed as ordered by charterers to receive from them a cargo of wheat and/or maize and/or rye "at one or two safe loading ports or places in the River Parana . . . and the balance of the cargo in the port of Buenos Aires." The charterers had contracted with a Swiss firm to buy maize f.o.b. Argentine ports at sellers' option in accordance with an allocation received from a body called the Grain Board, and the Swiss firm in turn contracted to buy the maize from an Argentine State concern which controlled the sale and export of maize. At the date of the charterparty the system of traffic control operated in the port of Buenos Aires did not permit vessels arriving to load maize to proceed beyond a point in the Roads called the Intersection—some 22 miles and three hours' steaming time from the dock area—until they had obtained a "giro" or permit, which was issued by the customs authority on the ship's application only when the shipper had obtained from the Grain Board a certificate to the effect that a cargo had been allocated. Once

the giro had been obtained, the ship could proceed to the dock area, where vessels due to load grain usually lay, and wait there until a loading berth became available. At the relevant time supplies of maize were coming down to the port so slowly that by August, 1954, there was a congestion of vessels arriving to load maize. On 1st September, 1954, to meet the temporary emergency, the port authority changed the previous system of traffic control by passing a resolution that before a giro could be issued, not only must the Grain Board's certificate be obtained, but also a cargo ready to be loaded must be available. The *Aello* arrived at the Intersection on 12th October, ready to proceed into the dock area; the shippers obtained the Grain Board's certificate on 13th October; there was then no congestion in the dock area; but the charterers did not have a cargo of maize ready to be loaded until 29th October. Accordingly, as a giro could not, under the terms of the resolution of 1st September, be issued, the ship was compelled to wait at the Intersection until 29th October. Though various operations were normally performed at the Intersection, loading of grain at that point was quite impracticable and was never done. The charterers, contending that the *Aello* was not an arrived ship until 29th October, claimed, *inter alia*, the return of demurrage paid by them to the shipowners under protest. The shipowners by way of defence, or, alternatively, by way of counterclaim for damages for breach of contract, contended that if the *Aello* was not an arrived ship on 12th October, that was due to the charterers' breach of their absolute obligation to provide a cargo in time. Ashworth, J., upheld both claim and counterclaim and both parties appealed.

PARKER, L.J., reading a judgment with which Lord Goddard, C.J., and Lloyd-Jacob, J., agreed, said that the first issue, whether the *Aello* became an arrived ship when she anchored in the Roads, depended on the application to these facts of the principle laid down in *Leonis Steamship Co., Ltd.* v. *Rank, Ltd.* [1908] 1 K.B. 499, at pp. 512–3 and 521–2. In that case the ship in question was not 22 miles away from the dock area but anchored a few ships' lengths off the pier alongside which loading took place. Though distance was not a conclusive factor, his lordship was satisfied that the *Aello* was not an arrived ship until 29th October, for when she was at the Intersection she was not within the commercial area of the port, namely, that part of the port where a ship could be loaded for maize when a berth was available; nor did the resolution of 1st September have the effect of extending the commercial area to embrace the Intersection. On the second issue, whether, if the *Aello* was not on 12th October an arrived ship, the charterers were themselves in breach of any duty which prevented her from being an arrived ship at any time before 29th October, 1954, the court was bound by the House of Lords decision in *Ardan Steamship Co., Ltd.* v. *Andrew Weir & Co.* [1905] A.C. 501 to hold that there was an absolute obligation on charterers to provide a cargo, or a reasonable part of it, in time to enable the ship to perform its obligation under the contract to become an arrived ship. The test of reasonableness was not enough. Accordingly the charterers were liable to the owners for breach of contract. On the question whether the charterers' breach was a matter of defence to the claim or of counterclaim only, his lordship thought that if in this case the ship had arrived, but it was provided that lay days were not to begin until something had been done which depended on the charterers' co-operation, then, if the charterers refused or neglected to co-operate, that something might well be deemed to have been done. But here, the primary obligation to arrive geographically was never fulfilled; and that being so, the charterers' breach was a matter for counterclaim. The appeals should be dismissed.

Leave to both parties to appeal to the House of Lords.

APPEARANCES: *A. A. Mocatta*, Q.C., and *R. A. MacCrindle* (*Holman, Fenwick & Willan*); *Eustace W. Roskill*, Q.C., and *John Donaldson* (*Richards, Butler & Co.*).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[3 W.L.R. 152**

RENT ACT PROBLEMS

Readers are cordially invited to submit their problems, whether on the Rent Act, 1957, or on other subjects, to the "Points in Practice" Department, "The Solicitors' Journal," Oyez House, Breams Buildings, Fetter Lane, London, E.C.4, but the following points should be noted:

1. Questions can only be accepted from registered subscribers who are practising solicitors.

2. Questions should be brief, typewritten *in duplicate*, and should be accompanied by the sender's name and address *on a separate sheet*.

3. If a postal reply is desired, a stamped addressed envelope should be enclosed.

Section 6—CONTRACTUAL TENANCY—NOTICE OF INCREASE—WHEN TO BE SERVED—DATE OF INCREASE

Q. A contractual tenant is in occupation of a dwelling on a verbal tenancy and pays rent half-yearly on 2nd February and August. The net rateable value is under £30. In view of the terms of the tenancy it would seem that if a notice to quit were to be served it would have to be six months to expire on 2nd February next. Note 3 on Form A under the Rent Restrictions Regulations, 1957, states that in the case of a contractual tenancy the date to be inserted in that form must be consistent with the terms of the tenancy and "must be a date later than the date on which a notice to quit served at the same time as this notice could bring the tenancy to an end." It seems to follow that (*a*) if a notice to quit were served it would have to be served before 2nd August next; (*b*) a notice in Form A would also have to be served before 2nd August next; (*c*) "the date to be inserted" in Form A would have to be 2nd August, 1959, i.e. (i) a date "later than" the date on which a notice to quit would expire; (ii) the next rent payment day after a notice to quit would expire so that it is consistent with the terms of the tenancy. Is that correct or can the date to be inserted in Form A be 2nd February next?

A. (*a*) We agree that if the habendum is either (i) six months to six months, or (ii) year to year from a 2nd February, the contractual tenancy is determinable on 2nd February, 1959, by a notice served before 2nd August, 1958. (*b*) We consider that a Form A notice served after 2nd August, 1958, could not increase rent as from 2nd February, 1959, as this would not be "consistent with the terms of the tenancy" as required by the Rent Act, 1957, s. 6 (2) (the effect of which the note endeavours to reproduce). (*c*) But we do not agree that no increase can take effect before 2nd August, 1959. The above-mentioned s. 6 (2) restricts the right to increase rent under a *contractual* tenancy and, even if no separate notice to quit be served, the notice of increase would, by virtue of subs. (3), convert the tenancy into a *statutory* tenancy as from 2nd February, 1959; which date can, in our opinion, be inserted. We would add that if the permitted increase sought to be made exceeds 7s. 6d. a week the nine months' provision of s. 2 (1) (*b*) makes it advisable to serve notice of increase now, in order to obtain as much benefit as possible from the Act.

Schedule I—CANCELLATION BY COUNTY COURT OF CERTIFICATE OF DISREPAIR AS RESPECTS SOME DEFECTS—POSITION AS TO ABATEMENT OF RENT

Q. Notice of increase on the appropriate Form A was served on *T* by the landlord's agents on 21st August, 1957. *T* served Form G containing particulars of external and internal decorative repairs on 19th October, 1957. The landlord's agents on his behalf gave an undertaking in Form K on 6th February, 1958, limited to the external

decorative repairs specified in Form G. Both *T* and the local authority declined to accept the undertaking on the grounds that it did not include all the items listed on the Form G, and the local authority issued a certificate of disrepair on 10th March, 1958, in relation to all the work. The landlord applied to the county court on 7th May, 1958, for the cancellation of the certificate of disrepair in so far as it related to internal decorative repairs and obtained the relief asked on 11th June, 1958. The points now at issue are: (*a*) Does the county court order quash the items cancelled in the certificate *ab initio* under para. 4 (6) of Sched. I to the 1957 Act? (*b*) If the local authority now cancel the certificate following the service of Form M, what is the position regarding the increase in *T*'s rent between the date Form A would have normally come into operation and the date of cancellation of the certificate? The Act does not appear to cover this point and it would appear that, as a result of *T*'s action in including irrelevant items in his Form G, he will avoid paying at the increased rate set out in the Form A until the certificate of disrepair is cancelled. Cannot a retrospective order be obtained from the county court in some manner?

A. (*a*) The effect of Sched. I, para. 4 (6), is, in our opinion, merely that the certificate of disrepair is deemed never to have specified the internal decorative items. (*b*) We agree that the Act does not appear to cover this point. The position is, we consider, that the local authority, not being concerned to inquire into any obligation as between landlord and tenant (Sched. I, para. 4 (4)), and being satisfied that the dwelling was in disrepair by reason of defects specified in the Form G and repeated in a Form I (para. 4 (1) and (2)), were obliged to issue the certificate when the landlord declined to give an undertaking to remedy (all) those defects (para. 4 (5)). The cancellation of some of the defects did not make the certificate void (para. 4 (6)) and there is, in our opinion, no provision for remitting the matter to the local authority in such circumstances, with a view to their accepting an undertaking. The abatement of rent provisions of para. 7 do not distinguish between certificates of disrepair which are deemed never to have had effect and those deemed never to have had some defects specified therein (para. 4 (6) again) and there is no provision for a retrospective order. It is possible that, apart from the Act itself, there may be a remedy either against the tenant or against the local authority. The tenant's application in Form I, in order to comply with para. 11 (2), should have been made with one of the two statements as to responsibility for internal decorative repairs, or both of them, struck out. If one was struck out, the tenant obtained the certificate and the abatement of rent by a misstatement. If both were struck out, the local authority acted *ultra vires* in issuing the certificate ("shall treat the landlord as not responsible for such repairs").

Effect of Certificate of Disrepair under Housing Repairs and Rents Act, 1954

Q. We act for landlords of an estate of small houses in a London suburb where the tenants are not liable for any repairs. Notices of increases of rent were served under the Housing Repairs and Rents Act, 1954, when the landlords did not elect not to be responsible for internal decorations. The tenants of one of these properties obtained from the local authority a certificate of disrepair under the Housing Repairs and Rents Act, 1954, which is still in force and it includes items of internal decorative work. The landlords do not desire to be responsible for internal decorations under the 1957 Act and desire to increase the rent up to twice the gross rateable value. They are considering whether to remedy the defects specified in the existing certificate of disrepair so that a notice of increase of rent under the Rent Act, 1957, can be served. Having regard to para. 3 (1) of Sched. VII to the Rent Act, 1957, will the landlords have to carry out the items of internal decorative work in the existing notice of disrepair before it can be revoked?

A. In our opinion the certificate of disrepair (the landlords not having served the notice prescribed by the Housing Repairs and Rents Act, 1954, s. 30 (3)) has indeed the effect of a certificate of disrepair under the Rent Act, 1957, by virtue of Sched. VII, para. 3 (1), to the latter. And we consider that it cannot be cancelled either by the county court or by the local authority; the landlords would be unable to satisfy the court that the internal decorative defects "ought not to have been specified": Sched. I, para. 4 (5); and unable to apply to the council for cancellation until the defects specified have been remedied: Sched. I, para. 6 (1), and Form M.

Corrigendum

Several subscribers have written in concerning our reply to the problem "Schedule I—Landlord's Undertaking to Repair—Failure to Repair—Rent Limit" (*ante*, p. 344; and see also p. 416, *ante*). The sequence of events in that problem was that some time between 10th August and 20th November, 1957, the tenant applied for a certificate of disrepair. The landlord gave an undertaking to remedy the defects on 11th December, 1957, and at the same time served a notice of increase. On 11th March, 1958 (three months after service of the notice of increase) the first increase of 7s. 6d. a week took effect. On 11th June, 1958 (six months after the landlord's undertaking) the repairs had not been done and so, by para. 8 (1) of Sched. I, a certificate of disrepair was deemed to have been issued on that date. The result of that is that by para. 7 (1) any notice of increase served during the period beginning six months before the application and ending when the certificate ceases to be in force "shall have no effect" as respects rental periods beginning while the certificate is in force. The notice of increase was served after the application for the certificate and so para. 7 (1) applies. Accordingly, the notice of increase has "no effect," while the certificate deemed to have been issued on the 11th June is in force. In our previous answer we unfortunately suggested that the result of this would be to reduce the rent to $1\frac{1}{3}$ the gross value plus rates, but this would only be so where the notice of increase had been served outside the period mentioned in para. 7 (1), or the rent had already been in excess of that amount. The correct answer would appear to be that in the circumstances of the problem, the rent would, on the certificate being deemed to be issued, revert to the amount originally payable and by para. 7 (4) the tenant would be entitled to recover payments already made as a result of the notice of increase. We are grateful to readers for pointing this out.

OBITUARY

Mr. B. B. S. Barraclough

Mr. Benjamin Brian Silverstone Barraclough, solicitor, of Oldham, died on 5th July, aged 55. He was admitted in 1927.

Major N. Gill

Major Neville Gill, solicitor, of Hexham, died on 6th July, aged 45. He was admitted in 1936.

Mr. G. A. Jones

Mr. George Albert Jones, solicitor, of East Grinstead, died on 7th July. He was admitted in 1911.

Mr. J. C. Taylor

Mr. James Connolly Taylor, solicitor, of Belfast, died recently, aged 76. He was admitted in 1904.

IN WESTMINSTER AND WHITEHALL

ROYAL ASSENT

The following Bills received the Royal Assent on 7th July:—

All Hallows the Great Churchyard.
All Hallows the Less Churchyard.
Blackpool Corporation.
Clergy Orphan Corporation.
Defence Contracts.
Disabled Persons (Employment).
Drainage Rates.
Essex County Council.
First Offenders.
Holy Trinity Hounslow.
Industrial Assurance and Friendly Societies Act, 1948 (Amendment).
Land Powers (Defence).
Litter.
London County Council (General Powers).
London County Council (Money).
Maintenance Orders.
Marriage Acts Amendment.
Matrimonial Causes (Property and Maintenance).
Matrimonial Proceedings (Children).
Opticians.
Physical Training and Recreation.
Pier and Harbour Order (Margate) Confirmation.
Royal Society for the Prevention of Cruelty to Animals.
Seaham Harbour Dock.
Solicitors (Scotland).

HOUSE OF LORDS

Progress of Bills

Read Second Time:—

Bradford Corporation (Trolley Vehicles) Order Confirmation Bill [H.C.] [7th July.
Costs of Leases Bill [H.C.] [7th July.
Local Government (Omnibus Shelters and Queue Barriers) (Scotland) Bill [H.C.] [8th July.
Maidstone Corporation (Trolley Vehicles) Order Confirmation Bill [H.C.] [7th July.
Pier and Harbour Order (Great Yarmouth) Confirmation Bill [H.C.] [7th July.
Pier and Harbour Order (King's Lynn Conservancy) Confirmation Bill [H.C.] [7th July.
Pier and Harbour Order (Sheerness) Confirmation Bill [H.C.] [7th July.

Read Third Time:—

British Transport Commission Order Confirmation (No. 2) Bill [H.C.] [9th July.
Falmouth Docks Bill [H.L.] [8th July.
Gloucester Corporation Bill [H.C.] [9th July.
Local Government Bill [H.C.] [10th July.
Variation of Trusts Bill [H.C.] [7th July.

In Committee:—

Opencast Coal Bill [H.C.] [10th July.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time:—

Race Discrimination (No. 2) Bill [H.C.] [8th July.

To make it illegal to refuse admission to lodging houses, restaurants, dance halls, and similar establishments on the grounds of colour, race or religion.

Read Second Time:—

Chequers Estate Bill [H.C.] [11th July.
City of London (Various Powers) Bill [H.L.] [7th July.
Falmouth Harbour Bill [H.L.] [7th July.
State of Singapore Bill [H.C.] [11th July.

Read Third Time:—

Agricultural Marketing Bill [H.L.] [11th July.
Dramatic and Musical Performers' Protection Bill [H.L.] [11th July.
Horse Breeding Bill [H.L.] [11th July.
Housing (Financial Provisions) Bill [H.L.] [11th July.
Prevention of Fraud (Investments) Bill [H.L.] [11th July.
South Lancashire Transport Bill [H.L.] [10th July.
Statute Law Revision Bill [H.L.] [11th July.

B. Questions

Summary Jurisdiction (Separation and Maintenance) Acts (Committee)

Mr. R. A. Butler said that he had now set up a Committee of experts to advise him on certain proposals which had been made to codify and improve the existing law under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949. The members were Mr. Justice Arthian Davies (chairman), Mr. A. F. Stapleton Cotton, Mr. L. H. Crossley, Mr. E. Hughes, C.B.E., Mr. J. K. T. Jones, C.B.E., Lady Littlewood, Mr. N. MacDermot, M.P., Mr. H. H. Maddocks, M.C., Mr. R. R. Pittam, Mr. P. Rawlinson, M.P., and Mr. J. Whiteside. The terms of reference were :—

"To consider a draft Bill designed to replace the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, and certain related enactments ; and to report whether, in the opinion of the Committee, the provisions of the draft Bill, either as referred to the Committee or with such amendments as they think proper to suggest, would constitute a convenient, workable and up-to-date system of law relating to matrimonial proceedings in magistrates' courts." [8th July.

Victims of Crimes of Violence (Compensation)

Mr. R. A. Butler stated that he was studying a proposal put forward by the late Miss Margery Fry that compensation should be paid by the State to victims of crimes of violence on a scale similar to that under the Industrial Injuries Scheme and should take the form of payments analogous to the injury, disablement and death benefits at present paid under the scheme. On the basis of the benefits payable in 1956 and the level of crimes of violence in that year it had been estimated that if payments were made under a funded scheme the annual cost would be about £200,000. The National Insurance payments would, on the 1956 basis, amount to about £50,000 a year. These figures related to England and Wales and he had no corresponding figures for Scotland.

Miss Fry's scheme and the difficult complex of problems involved in the suggestion that the State should pay compensation to the victims of crimes of violence were under consideration but he was not yet in a position to make a statement of Government policy. [10th July.

Department of Criminal Science, Cambridge (Grant)

Mr. R. A. Butler said that the Home Office made an annual grant towards the cost of the research on the causes of delinquency and the treatment of offenders carried out by the Department of Criminal Science at Cambridge. The department had been working on several projects of interest to the Home Office and the grant was not appropriated to any one of them. He understood that the department expected to be able to produce the final report on the study of crimes of violence in the Metropolitan Police District in the first half of 1959. [10th July.

STATUTORY INSTRUMENTS

Coal (Revocation) Order, 1958. (S.I. 1958 No. 1108.) 4d.
Fertilisers (United Kingdom) Scheme, 1958. (S.I. 1958 No. 1103.) 6d.
Folkestone (Water Charges) Order, 1958. (S.I. 1958 No. 1086.) 5d.
Herring Subsidy (United Kingdom) Scheme, 1958. 5d

Hydrocarbon Oil Duties (Drawback) (No. 1) Order, 1958. (S.I. 1958 No. 1107.) 5d.
London Traffic (Prescribed Routes) (Hammersmith) Regulations, 1958. (S.I. 1958 No. 1113.) 5d.
London Traffic (Prescribed Routes) (Westminster) Regulations, 1958. (S.I. 1958 No. 1095.) 5d.
London (Waiting and Loading) (Restriction) (Amendment) Regulations, 1958. (S.I. 1958 No. 1093.) 5d.
National Insurance (Industrial Injuries) (Benefit) Amendment Regulations, 1958. (S.I. 1958 No. 1083.) 5d.
Draft National Insurance (Industrial Injuries) (Colliery Workers Supplementary Scheme) Amendment Order, 1958. 8d.
National Insurance (Residence and Persons Abroad) Amendment Regulations, 1958. (S.I. 1958 No. 1084.) 5d.
Draft **Pneumoconiosis and Byssinosis** Benefit Amendment Scheme, 1958. 5d.
Stopping up of Highways (County of Derby) (No. 8) Order, 1958. (S.I. 1958 No. 1096.) 5d.
Stopping up of Highways (County of Glamorgan) (No. 5) Order, 1958. (S.I. 1958 No. 1100.) 5d.
Stopping up of Highways (County of Leicester) (No. 9) Order, 1958. (S.I. 1958 No. 1099.) 5d.
Stopping up of Highways (County of York, West Riding) (No. 10) Order, 1958. (S.I. 1958 No. 1070.) 5d.
Wages Regulation (Baking) (Scotland) (Amendment) Order, 1958. (S.I. 1958 No. 1081.) 6d.
Wages Regulation (Boot and Shoe Repairing) (Amendment) Order, 1958. (S.I. 1958 No. 1092.) 6d.
Wages Regulation (Road Haulage) (Amendment) Order, 1958. (S.I. 1958 No. 1082.) 6d.
Westminster (Waiting and Loading) (Restriction) Regulations, 1958. (S.I. 1958 No. 1094.) 8d.
West Surrey (Water Charges) Order, 1958. (S.I. 1958 No. 1087.) 5d.
White Fish Subsidy (United Kingdom) Scheme, 1958. 7d.

"THE SOLICITORS' JOURNAL," 17th JULY, 1858

On the 17th July, 1858, THE SOLICITORS' JOURNAL wrote: "It is satisfactory to observe that the fair promises of the Lord Chancellor have been followed up by acts which everyone in the profession must approve. We noticed a few weeks back the sincere desire which Lord Chelmsford appeared to entertain to promote the efficiency of the court over which he had been appointed to preside. The expectations which we then formed have been to a considerable extent justified by the recent appointment of an additional taxing master. One great and crying evil has thus been to some extent at least remedied and the Lord Chancellor has shown himself disposed to listen to the suggestions of practical reformers . . . It will not be out of place to mention here that a deputation of the Incorporated Law Society lately waited upon Lord Chelmsford, to bring under his notice the plan, often advanced in these columns for consolidating all the law courts and offices in one commodious and well-placed edifice. It is extremely undesirable that any scheme should be adopted for erecting in Stone Buildings or elsewhere courts and offices sufficient only to accommodate the judges and clerks of the Court of Chancery. We trust that the deputation have, at least, prevented any step by the Government which could amount to an adoption of the smaller plan."

NOTES AND NEWS

Honours and Appointments

Mr. A. L. L. EVANS, solicitor, of Lincoln's Inn Fields, took office on 2nd July as Master of the Worshipful Company of Cutlers of London.

Mr. S. E. GOMES, Chief Justice, Barbados, has been appointed Chief Justice, Trinidad and Tobago, in succession to Sir Joseph Mathieu-Perey, who has retired.

Mr. G. J. HORSFALL, Judicial Commissioner, British Solomon Islands Protectorate, has been appointed Judge, Zanzibar.

Personal Notes

Mr. Harold Buxton, solicitor, of Amersham, has completed twenty-one years' service as clerk and solicitor to Amersham Rural District Council.

Mr. John Benson Hagar, solicitor, of Chester, was married on 5th July at Sprotborough, nr. Doncaster, to Miss Jillian Franklin Hirst.

Janet Carolyn, infant daughter of Mr. and Mrs. G. M. Hodges, of Leatherhead, who is to be christened on 20th July, is the daughter, granddaughter and great granddaughter of solicitors. The three godparents will include a solicitor and a solicitor's wife. One in four of the guests will be solicitors.

Mr. Charles J. Morris, solicitor, of Doncaster, has retired because of ill health.

Miscellaneous

THE SOLICITORS ACT, 1957

On the 26th June, 1958, an order was made by the Disciplinary Committee constituted under the Solicitors Act, 1957, that there be imposed upon GEOFFREY LESLIE SMITH of Auriol House, No. 137 Hammersmith Road, London, W.14, and of No. 12 Vernon Street, Hammersmith, W.14, a penalty of £100 to be forfeit to Her Majesty, and that he do pay to the complainant his costs of and incidental to the application and inquiry.

On the 26th June, 1958, an order was made by the Disciplinary Committee constituted under the Solicitors Act, 1957, that the name of FRANK DOUGLAS of No. 19 Brazennose Street, Manchester, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On the 26th June, 1958, an order was made by the Disciplinary Committee constituted under the Solicitors Act, 1957, that there be imposed upon WILLIAM HARTTREE BALL of No. 16 Sudbury Road, Bognor Regis, and of No. 75 High Street, Littlehampton, Sussex, a penalty of £250 to be forfeit to Her Majesty, and that he do pay to the complainant his costs of and incidental to the application and inquiry.

On the 26th June, 1958, an order was made by the Disciplinary Committee constituted under the Solicitors Act, 1957, that the name of GEOFFREY FREDERICK MARSHALL of No. 2 Grove House, No. 6 Grove Road, Sutton, Surrey, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On the 26th June, 1958, an order was made by the Disciplinary Committee constituted under the Solicitors Act, 1957, that the name of GUTHRIE PHILLIPS of No. 5 Kendal Court, Shoot-up-Hill, Cricklewood, N.W.2, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On the 26th June, 1958, an order was made by the Disciplinary Committee constituted under the Solicitors Act, 1957, that the name of WINSTON FISHER of No. 4 Lawson Street, Barrow-in-Furness, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

DEVELOPMENT PLANS

Hampshire Development Plan

On 25th June, 1958, the Minister of Housing and Local Government amended the above development plan. A certified copy of the plan, as amended by the Minister, has been deposited at the office of the County Planning Officer, Litton Lodge, Clifton Road, Winchester, and certified extracts thereof so far as the amendment relates to land in the Parish of Hurn, the Parish of St. Leonards and St. Ives, the Parish of Ringwood and the Parish of Sopley have also been deposited at the following places :—

The office of the Clerk of the Ringwood and Fordingbridge Rural District Council.

Public Offices, Ringwood.

The office of the South-West Area Planning Officer, Newnham Croft, Empress Avenue, Lyndhurst.

The copy or extracts of the plan so deposited will be open for inspection free of charge by all persons interested between the hours of 9 a.m. and 5 p.m. on Mondays to Fridays. The amendment became operative as from 4th July, 1958, but if any person aggrieved by it desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the making of the amendment, he may, within six weeks from 4th July, 1958, make application to the High Court.

Lancashire County Council Development Plan, 1951

Proposals for alterations or additions to the above development plan were on 25th June, 1958, submitted to the Minister of Housing and Local Government. The proposals relate to land situate within the Municipal Boroughs of Leigh and Ashton-under-Lyne respectively. Certified copies of the proposals as submitted have been deposited for public inspection at the County Hall, Preston, and at the respective offices of the Town Clerks of Leigh and Ashton-under-Lyne. The copies of the proposals so deposited together with copies of relevant extracts of the plan are available for inspection free of charge by all persons interested at the places mentioned between the hours of 9 a.m. and 5 p.m. Mondays to Fridays inclusive, and 9 a.m. and 12 noon on Saturdays. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 30th August, 1958, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Clerk of the County Council, County Hall, Preston, and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

Administrative County of London Development Plan

On 1st July, 1958, the Minister of Housing and Local Government amended the above plan. A certified copy of the plan, as amended by the Minister, has been deposited at The County Hall, Westminster Bridge, S.E.1 (Room 314A), and certified copies of the development plan, as amended, or certified extracts thereof so far as the amendment relates to the Metropolitan Borough of Southwark (Elephant and Castle Comprehensive Development Area) have also been deposited at the Southwark Town Hall, Walworth Road, S.E.17. The copies or extracts of the plan, so deposited, will be open for inspection free of charge by all persons interested between the hours of 10 a.m. and 4 p.m. Monday to Friday, 10 a.m. and 12 noon Saturday. The amendment became operative as from 4th July, 1958, but if any person aggrieved by it desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the making of the amendment, he may, within six weeks from 4th July, 1958, make application to the High Court.

West Suffolk County Development Plan

On 13th May, 1958, the Minister of Housing and Local Government amended the above development plan. A certified copy of the plan as amended by the Minister has been deposited at the Shire Hall, Bury St. Edmunds, and a certified copy of the plan as amended so far as the amendment relates to the Urban District of Newmarket has also been deposited at the offices of the urban district council, Severals House, Newmarket. The copies of the plan so deposited will be open for inspection free of charge by all persons interested between the hours of 10.30 a.m. and 4 p.m. on Mondays to Fridays inclusive and 10.30 a.m. to 12 noon on Saturdays. The amendment became operative as from 1st July, 1958, but if any person aggrieved by it desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the making of the amendment, he may, within six weeks from 1st July, 1958, make application to the High Court.

Development Plan for the Administrative County of Warwick

On 12th June, 1958, the Minister of Housing and Local Government amended the above development plan. A certified copy of the plan, as amended by the Minister, has been deposited at the office of the Clerk of the Council, Shire Hall, Warwick, and a certified copy of the plan as amended or certified extracts thereof, so far as the amendment relates to the Borough of Solihull, has also been deposited at the Town Clerk's Office, Council House, Solihull. The copies or extracts of the plan so deposited will be open for inspection free of charge by all persons interested on any weekday during usual office hours. The amendment became operative as from 27th June, 1958, but if any person aggrieved by it desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the making of the amendment, he may, within six weeks from 27th June, 1958, make application to the High Court.

Wills and Bequests

Mr. T. H. Partridge, solicitor, of Walsall, left £32,029 net.

SOCIETIES

SOLICITORS BENEVOLENT ASSOCIATION

At the monthly meeting of the Board of Directors held on 2nd July, 1958, Mr. Herbert Edward Rowe, of Middlesbrough, and Mr. George Clifford Young, of London, were elected Directors of the Association. Thirty-six solicitors were admitted as members of the Association, bringing the total membership up to 8,182. Forty-two applications for relief were considered, and grants totalling £4,050 18s. 9d. were made, £213 4s. 9d. of which was in respect of " special " grants for holidays, clothing, etc.

All solicitors on the Roll for England and Wales are eligible to apply for membership, and application forms and general information leaflets will gladly be supplied on request to the Association's Offices, Clifford's Inn, Fleet Street, London, E.C.4. The minimum annual subscription is £1 1s.

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Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).